

James Madison to Joseph C. Cabell, September 18, 1828. Transcription: The Writings of James Madison, ed. Gaillard Hunt. New York: G.P. Putnam's Sons, 1900-1910.

TO JOSEPH C. CABELL. MAD. MSS.

Montpr Sepr 18 1828.

Dear Sir Your late letter reminds me of our Conversation on the constitutionality of the power in Congs. to impose a tariff for the encouragemt. of Manufactures; and of my promise to sketch the grounds of the confident opinion I had expressed that it was among the powers vested in that Body. I had not forgotten my promise, & had even begun the task of fulfilling it; but frequent interruptions from other causes, being followed by a bilious indisposition, I have not been able sooner to comply with your request. The subjoined view of the subject, might have been advantageously expanded; but I leave that improvement to your own reflections and researches.^{1a}

^{1b} On Sept. 27 Cabell wrote Madison asking permission to print this letter and on October 15 Madison replied that because of the all-absorbing interest in the impending presidential election it must not be printed until the election was over and the public mind should be in a tranquil state.— *Mad. MSS.*

Madison wrote to Cabell again October 30:

“In my letter of September 18th, I stated briefly the grounds on which I rested my opinion that a power to impose duties & restrictions on imports with a view to encourage domestic productions, was constitutionally lodged in Congress. In the observations then made was

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involved the opinion also, that the power was properly there lodged. As this last opinion necessarily implies that there are cases in which the power may be usefully exercised by Congress, the only Body within our political system capable of exercising it with effect, you may think it incumbent on me to point out cases of that description.

“I will premise that I concur in the opinion that, as a *general* rule, individuals ought to be deemed the best judges, of the best application of their industry and resources.

“I am ready to admit also that there is no Country in which the application may, with more safety, be left to the intelligence and enterprize of individuals, than the U. States.

“Finally, I shall not deny that, in all doubtful cases, it becomes every Government to lean rather to a confidence in the judgment of individuals, than to interpositions controuling the free exercise of it.

“With all these concessions, I think it can be satisfactorily shewn, that there are exceptions to the general rule, now expressed by the phrase ‘Let us alone,’ forming cases which call for interpositions of the competent authority, and which are not inconsistent with the generality of the rule.

“1. The Theory of ‘Let us alone,’ supposes that all nations concur in a perfect freedom of commercial intercourse. Were this the case, they would, in a commercial view, be but one nation, as much as the several districts composing a particular nation; and the theory would be as applicable to the former, as to the latter. But this golden age of free trade has not yet arrived; nor is there a single nation that has set the example. No Nation can, indeed, safely do so, until a reciprocity at least be ensured to it. Take for a proof, the familiar case of the navigation employed in a foreign commerce. If a nation adhering to the rule of never interposing a countervailing protection of its vessels, admits foreign vessels into its ports free of duty, whilst its own vessels are subject to a duty in foreign ports, the

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ruinous effect is so obvious, that the warmest advocate for the theory in question, must shrink from a *universal* application of it.

“A nation leaving its foreign trade, in all cases, to regulate itself, might soon find it regulated by other nations, into a subserviency to a foreign interest. In the interval between the peace of 1783, and the establishment of the present Constitution of the U. States, the want of a General Authority to regulate trade, is known to have had this consequence. And have not the pretensions & policy latterly exhibited by G. Britain, given warning of a like result from a renunciation of all countervailing regulations, on the part of the U. States. Were she permitted, by conferring on certain portions of her Domain the name of Colonies, to open from these a trade for herself, to foreign Countries, and to exclude, at the same time, a reciprocal trade to such colonies by foreign Countries, the use to be made of the monopoly needs not be traced. Its character will be placed in a just relief, by supposing that one of the Colonial Islands, instead of its present distance, happened to be in the vicinity of G. Britain, or that one of the Islands in that vicinity, should receive the name & be regarded in the light of a Colony, with the peculiar privileges claimed for colonies. Is it not manifest, that in this case, the favored Island might be made the sole medium of the commercial intercourse with foreign nations, and the parent Country thence enjoy every essential advantage, as to the terms of it, which would flow from an *unreciprocal* trade from her other ports with other nations.

“Fortunately the British claims, however speciously coloured or adroitly managed were repelled at the commencement of our commercial career as an Independent people; and at successive epochs under the existing Constitution, both in legislative discussions and in diplomatic negotiations. The claims were repelled on the solid ground, that the Colonial trade as a *rightful monopoly*, was limited to the intercourse between the parent Country & its Colonies, and between one Colony and another; the whole being, strictly in the nature of a coasting trade from one to another port of the same nation; a trade with which no other nation has a right to interfere. It follows of necessity, that the Parent Country, whenever it opens a Colonial port for a direct trade to a foreign Country, departs itself from

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the principle of Colonial Monopoly, and entitles the foreign Country to the same reciprocity in every respect, as in its intercourse with any other ports of the nation.

“This is common sense, and common right. It is still more, if more could be required; it is in conformity with the established usage of all nations, other than Great Britain, which have Colonies; notwithstanding British representations to the contrary. Some of those Nations are known to adhere to the monopoly of their Colonial trade, with all the rigor & constancy which circumstances permit. But it is also known, that whenever, and from whatever cause, it has been found necessary or expedient, to open their Colonial ports to a foreign trade, the rule of reciprocity in favour of the foreign party was not refused, nor, as is believed, a right to refuse it ever pretended.

“It cannot be said that the reciprocity was dictated by a deficiency of the commercial marine. France, at least could not be, in every instance, governed by that consideration; and Holland still less; to say nothing of the navigating States of Sweden and Denmark, which have rarely if ever, enforced a colonial monopoly. The remark is indeed obvious, that the shipping liberated from the usual conveyance of supplies from the parent Country to the Colonies, might be employed in the new channels opened for them in supplies from abroad.

“Reciprocity, or an equivalent for it, is the only rule of intercourse among Independent communities; and no nation ought to admit a doctrine, or adopt an invariable policy, which would preclude the counteracting measures necessary to enforce the rule.

“2. The Theory supposes moreover a perpetual peace, not less chimerical, it is to be feared, than a universal freedom of commerce.

“The effect of war among the commercial and manufacturing nations of the World, in raising the wages of labour and the cost of its products, with a like effect on the charges of freight and insurance, needs neither proof nor explanation. In order to determine, therefore, a question of economy between depending on foreign supplies, and

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encouraging domestic substitutes, it is necessary to compare the probable periods of war, with the probable periods of peace; and the cost of the domestic encouragement in times of peace, with the cost added to foreign articles in times of War.

“During the last century the periods of war and peace have been nearly equal. The effect of a state of war in raising the price of imported articles, cannot be estimated with exactness. It is certain, however, that the increased price of particular articles, may make it cheaper to manufacture them at home.

“Taking, for the sake of illustration, an equality in the two periods, and the cost of an imported yard of cloth in time of war to be 9½ dollars, and in time of peace to be 7 dollars, whilst the same could, at all times, be manufactured at home, for 8 dollars; it is evident that a tariff of 1¼ dollar on the imported yard, would protect the home manufacture in time of peace, and avoid a tax of 1½ dollars imposed by a state of war.

“It cannot be said that the manufactories, which could not support themselves in periods of peace, would spring up of themselves at the recurrence of war prices. It must be obvious to every one, that, apart from the difficulty of great & sudden changes of employment, no prudent capitalists would engage in expensive establishments of any sort, at the commencement of a war of uncertain duration, with a certainty of having them crushed by the return of peace.

“The strictest economy, therefore, suggests, as exceptions to the general rule, an estimate, in every given case, of war & peace periods and prices, with inferences therefrom, of the amount of a tariff which might be afforded during peace, in order to avoid the tax resulting from war. And it will occur at once, that the inferences will be strengthened, by adding to the supposition of wars wholly foreign, that of wars in which our own country might be a party.¹

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1 The rest of the letter is missing from the Madison MSS. and is reprinted from the *Works of Madison* (Cong. Ed.).

“3. It is an opinion in which all must agree, that no nation ought to be unnecessarily dependent on others for the munitions of public defence, or for the materials essential to a naval force, where the nation has a maritime frontier or a foreign commerce to protect. To this class of exceptions to the theory may be added the instruments of agriculture and of mechanic arts, which supply the other primary wants of the community. The time has been when many of these were derived from a foreign source, and some of them might relapse into that dependence were the encouragement to the fabrication of them at home withdrawn. But, as all foreign sources must be liable to interruptions too inconvenient to be hazarded, a provident policy would favour an internal and independent source as a reasonable exception to the general rule of consulting cheapness alone.

“4. There are cases where a nation may be so far advanced in the pre-requisites for a particular branch of manufactures, that this, if once brought into existence, would support itself; and yet, unless aided in its nascent and infant state by public encouragement and a confidence in public protection, might remain, if not altogether, for a long time unattempted, or attempted without success. Is not our cotton manufacture a fair example? However favoured by an advantageous command of the raw material, and a machinery which dispenses in so extraordinary a proportion with manual labour, it is quite probable that, without the impulse given by a war cutting off foreign supplies and the patronage of an early tariff, it might not even yet have established itself; and pretty certain that it would be far short of the prosperous condition which enables it to face, in foreign markets, the fabrics of a nation that defies all other competitors. The number must be small that would now pronounce this manufacturing boon not to have been cheaply purchased by the tariff which nursed it into its present maturity.

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“5. Should it happen, as has been suspected, to be an object, though not of a foreign Government itself, of its great manufacturing capitalists, to strangle in the cradle the infant manufactures of an extensive customer or an anticipated rival, it would surely, in such a case, be incumbent on the suffering party so far to make an exception to the ‘let alone’ policy as to parry the evil by opposite regulations of its foreign commerce.

“6. It is a common objection to the public encouragement of particular branches of industry, that it calls off labourers from other branches found to be more profitable; and the objection is, in general, a weighty one. But it loses that character in proportion to the effect of the encouragement in attracting skilful labourers from abroad. Something of this sort has already taken place among ourselves, and much more of it is in prospect; and as far as it has taken or may take place, it forms an exception to the general policy in question.

“The history of manufactures in Great Britain, the greatest manufacturing nation in the world, informs us, that the woollen branch, till of late her greatest branch, owed both its original and subsequent growths to persecuted exiles from the Netherlands; and that her silk manufactures, now a flourishing and favourite branch, were not less indebted to emigrants flying from the persecuting edicts of France. [*Anderson's History of Commerce*.]

“It appears, indeed, from the general history of manufacturing industry, that the prompt and successful introduction of it into new situations has been the result of emigrations from countries in which manufactures had gradually grown up to a prosperous state; as into Italy, on the fall of the Greek Empire; from Italy into Spain and Flanders, on the loss of liberty in Florence and other cities; and from Flanders and France into England, as above noticed. [*Franklin's Canadian Pamphlet*.]

“In the selection of cases here made, as exceptions to the ‘let alone’ theory, none have been included which were deemed controvertible; and if I have viewed them, or a part of them only, in their true light, they show what was to be shown, that the power granted to Congress to encourage domestic products by regulations of foreign trade was

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properly granted, inasmuch as the power is, in effect, confined to that body, and may, when exercised with a sound legislative discretion, provide the better for the safety and prosperity of the nation.”

Notes.

“It does not appear that any of the strictures on the letters from J. Madison to J. C. Cabell have in the least invalidated the constitutionality of the power in Congress to favour domestic manufactures by regulating the commerce with foreign nations.

“1. That this regulating power embraces the object remains fully sustained by the uncontested fact that it has been so understood and exercised by all commercial and manufacturing nations, particularly by Great Britain; nor is it any objection to the inference from it, that those nations, unlike the Congress of the United States, had all other powers of legislation as well as the power of regulating foreign commerce, since this was the particular and appropriate power by which the encouragement of manufactures was effected.

“2. It is equally a fact that it was generally understood among the States previous to the establishment of the present Constitution of the United States, that the encouragement of domestic manufactures by regulations of foreign commerce, particularly by duties and restrictions on foreign manufactures, was a legitimate and ordinary exercise of the power over foreign commerce; and that, in transferring this power to the Legislature of the United States, it was anticipated that it would be exercised more effectually than it could be by the States individually. [See Lloyd's Debates and other publications of the period.]

“It cannot be denied that a right to vindicate its commercial, manufacturing, and agricultural interests against unfriendly and unreciprocal policy of other nations, belongs to every nation; that it has belonged at all times to the United States as a nation; that, previous to the present Federal Constitution, the right existed in the governments of the individual States, not in the Federal Government; that the want of such an authority in the Federal

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Government was deeply felt and deplored; that a supply of this want was generally and anxiously desired; and that the authority has, by the substituted Constitution of the Federal Government, been expressly or virtually taken from the individual States; so that, if not transferred to the existing Federal Government it is lost and annihilated for the United States as a nation. Is not the presumption irresistible, that it must have been the intention of those who framed and ratified the Constitution, to vest the authority in question in the substituted Government? and does not every just rule of reasoning allow to a presumption so violent a proportional weight in deciding on a question of such a power in Congress, not as a source of power distinct from and additional to the constitutional source, but as a source of light and evidence as to the true meaning of the Constitution?

“3. It is again a fact, that the power was so exercised by the first session of the first Congress, and by every succeeding Congress, with the sanction of every other branch of the Federal Government, and with universal acquiescence, till a very late date. [See the Messages of the Presidents and the Reports and Letters of Mr. Jefferson.]

“4. That the surest and most recognized evidence of the meaning of the Constitution, as of a law, is furnished by the evils which were to be cured or the benefits to be obtained; and by the immediate and long-continued application of the meaning to these ends. This species of evidence supports the power in question in a degree which cannot be resisted without destroying all stability in social institutions, and all the advantages of known and certain rules of conduct in the intercourse of life.

“5. Although it might be too much to say that no case could arise of a character overruling the highest evidence of precedents and practice in expounding a constitution, it may be safely affirmed that no case which is not of a character far more exorbitant and ruinous than any now existing or that has occurred, can authorize a disregard of the precedents and practice which sanction the constitutional power of Congress to encourage domestic manufactures by regulations of foreign commerce.

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“The importance of the question concerning the authority of precedents, in expounding a constitution as well as a law, will justify a more full and exact view of it.

“It has been objected to the encouragement of domestic manufactures by a tariff on imported ones, that duties and imposts are in the clause specifying the sources of revenue, and therefore cannot be applied to the encouragement of manufactures when not a source of revenue.

“But, 1. It does not follow from the applicability of duties and imposts under one clause for one usual purpose, that they are excluded from an applicability under another clause to another purpose, also requiring them, and to which they have also been usually applied.
“2. A history of that clause, as traced in the printed journal of the Federal Convention, will throw light on the subject.

“It appears that the clause, as it originally stood, simply expressed ‘a power to lay taxes, duties, imposts, and excises,’ without pointing out the objects; and, of course, leaving them applicable in carrying into effect the other specified powers. It appears, farther, that a solicitude to prevent any constructive danger to the validity of public debts contracted under the superseded form of government, led to the addition of the words ‘to pay the debts.’

“This phraseology having the appearance of an appropriation limited to the payment of debts, an express appropriation was added ‘for the expenses of the Government,’ &c.

“But even this was considered as short of the objects for which taxes, duties, imposts, and excises might be required; and the more comprehensive provision was made by substituting ‘for expenses of Government’ the terms of the old Confederation, viz.: and provide for the common defence and general welfare, making duties and imposts as well as taxes and excises, applicable not only to payment of debts, but to the common defence and general welfare.

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“The question then is, What is the import of that phrase, common defence and general welfare, in its actual connexion? The import which Virginia has always asserted, and still contends for, is, that they are explained and limited to the enumerated objects subjoined to them, among which objects is the regulation of foreign commerce; as far, therefore, as a tariff of duties is necessary and proper in regulating foreign commerce for any of the usual purposes of such regulations, it may be imposed by Congress, and, consequently, for the purpose of encouraging manufactures, which is a well-known purpose for which duties and imposts have been usually employed. This view of the clause providing for revenue, instead of interfering with or excluding the power of regulating foreign trade, corroborates the rightful exercise of power for the encouragement of domestic manufactures.

It may be thought that the Constitution might easily have been made more explicit and precise in its meaning. But the same remark might be made on so many other parts of the instrument, and, indeed, on so many parts of every instrument of a complex character, that, it completely obviated, it would swell every paragraph into a page and every page into a volume; and, in so doing, have the effect of multiplying topics for criticism and controversy.

The best reason to be assigned, in this case, for not having made the Constitution more free from a charge of uncertainty in its meaning, is believed to be, that it was not suspected that any such charge would ever take place; and it appears that no such charge did take place, during the early period of the Constitution, when the meaning of its authors could be best ascertained, nor until many of the contemporary lights had in the lapse of time been extinguished. How often does it happen, that a notoriety of intention diminishes the caution against its being misunderstood or doubted! What would be the effect of the Declaration of Independence, or of the Virginia Bill of Rights, if not expounded with a reference to that view of their meaning?

“Those who assert that the encouragement of manufactures is not within the scope of the power to regulate foreign commerce, and that a tariff is exclusively appropriated

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to revenue, feel the difficulty of finding authority for objects which they cannot admit to be unprovided for by the Constitution; such as ensuring internal supplies of necessary articles of defence, the countervailing of regulations of foreign countries, &c., unjust and injurious to our navigation or to our agricultural products. To bring these objects within the constitutional power of Congress, they are obliged to give to the power “to regulate foreign commerce” an extent that at the same time necessarily embraces the encouragement of manufactures; and how, indeed, is it possible to suppose that a tariff is applicable to the extorting from foreign Powers of a reciprocity of privileges and not applicable to the encouragement of manufactures, an object to which it has been far more frequently applied?”

He wrote again December 5:

“Has not the passage in Mr. Jefferson's letter to Mr. Giles, to which you allude, denouncing the assumptions of power by the General Government, been in some respects misunderstood? ‘They assume,’ he says, ‘*indefinitely* that also over Agriculture and Manufactures.’ It would seem that writing confidentially, & probably in haste, he did not discriminate with the care he otherwise might have done, between an assumption of power and an abuse of power; relying on the term ‘*indefinitely*’ to indicate an excess of the latter, and to imply an admission of a *definite* or reasonable use of the power to regulate trade for the encouragement of manufacturing and agricultural products. This view of the subject is recommended by its avoiding a variance with Mr. Jefferson's known sanctions, in official acts & private correspondence, to a power in Congress to encourage manufactures by commercial regulations. It is not easy to believe that he could have intended to reject *altogether* such a power. It is evident from the context that his language was influenced by the great injustice, impressed on his mind, of a measure charged with the effect of taking the earnings of one, & that the most suffering class, & putting them into the pockets of another, & that the most flourishing class. Had Congress so regulated an impost for revenue merely, as in the view of Mr. Jefferson to oppress one section of the Union & favor another, it may be presumed that the language used by him, would have been not

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less indignant, tho the Tariff, in that case, could not be otherwise complained of, than as an abuse, not as a usurpation of power; or, at most, as an abuse violating the spirit of the Constitution, as every unjust measure must that of every Constitution, having justice for a cardinal object. No Constitution could be lasting without an habitual distinction between an abuse of legitimate power, and the exercise of a usurped one. It is quite possible that there might be a latent reference in the mind of Mr. Jefferson to the reports of Mr. Hamilton & Executive recommendations, to Congress favorable to indefinite power over both Agriculture and Manufactures. He might have seen also the report of a Committee of a late Congress presented by Mr. Steward, of Pennsylvania, which in supporting the cause of internal improvement, took the broad ground of 'General Welfare,' (including, of course, every internal as well as external power,) without incurring any positive mark of disapprobation from Congress."— *Mad. MSS.*

The Constitution vests in Congress expressly "the power to lay & collect taxes duties imposts & excises;" and "the power to regulate trade" would have been included in the latter, as one of the objects of a general power to regulate trade, is not necessarily impugned, as has been alledged, by its being so expressed. Examples of this sort, cannot sometimes be easily avoided, and are to be seen elsewhere in the Constitution. Thus the power "to define & punish offences agst. the law of Nations" includes the power, afterward particularly expressed "to make rules concerning captures &c., from offending Neutrals." So also, a power "to coin money," would doubtless include that of "regulating its value," had not the latter power been expressly inserted. The term taxes, if standing *alone*, would certainly have included, duties, imposts & excises. In another clause it is said, "no tax or duty shall be laid on imports [exports]," &c. Here the two terms are used as synonymous. And in another clause where it is said, "no State shall lay any imposts or duties" &c, the terms imposts & duties are synonymous. Pleonasms, tautologies & the promiscuous use of terms & phrases differing in their shades of meaning, (always to be expounded with reference to the context and under the controul of the general character & manifest scope of the Instrument in which they are found) are to be ascribed sometimes to the

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purpose of greater caution; sometimes to the imperfections of language; & sometimes to the imperfection of man himself. In this view of the subject, it was quite natural, however certainly the general power to regulate trade might include a power to impose duties on it, not to omit it in a clause enumerating the several modes of revenue authorized by the Constitution. In few cases could the “ *ex majori cautela* ” occur with more claim to respect.

Nor can it be inferred, as has been ingeniously attempted, that a power to regulate trade does not involve a power to tax it, from the distinction made in the original controversy with G. Britain, between a power to regulate trade with the Colonies & a power to tax them. A power to regulate trade between different parts of the Empire was confessedly *necessary*; and was admitted to lie, as far as that was the case in the British Parliament, the taxing part being at the same time denied to the Parliament, & asserted to be necessarily inherent in the Colonial Legislatures, as sufficient & the only safe depositories of the taxing power. So difficult was it nevertheless

to maintain the distinction in practice, that the ingredient of revenue was occasionally overlooked or disregarded in the British regulations; as in the duty on sugar & Molasses imported into the Colonies. And it was fortunate that the attempt at an internal and direct tax in the case of the Stamp Act, produced a radical examination of the subject, before a regulation of trade with a view to revenue had grown into an established Authority. One thing at least is certain, that the main & admitted object of the Parliamentary *regulations* of trade with the Colonies, was the encouragement of *manufactures* in G. B.

But the present question is unconnected, with the former relations between G. B. and her Colonies, which were of a peculiar, a complicated, and, in several respects, of an undefined character. It is a simple question under the Constitution of the U. S. whether “the power to regulate trade with foreign nations” as a distinct & substantive item in the enumerated powers, embraces the object of encouraging by duties restrictions and prohibitions the manufactures & products of the Country? And the affirmative must be inferred from the following considerations:

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1. The meaning of the Phrase “to regulate trade” must be sought in the general use of it, in other words in the objects to which the power was generally understood to be applicable, when the Phrase was inserted in the Constn.
2. The power has been understood and used by all commercial & manufacturing Nations as embracing the object of encouraging manufactures. It is believed that not a single exception can be named.
3. This has been particularly the case with G. B., whose commercial vocabulary is the parent of ours. A primary object of her commercial regulations is well known to have been the protection and encouragement of her manufactures
4. Such was understood to be a proper use of the power by the States most prepared for manufacturing industry, while retaining the power over their foreign trade. It was the aim of Virginia herself, as will presently appear, tho' at the time among the least prepared for such a use of her power to regulate trade.
5. Such a use of the power by Cong accords with the intention and expectation of the States in transferring the power over trade from themselves to the Govt. of the U. S. This was emphatically the case in the Eastern, the more manufacturing members of the Confederacy. Hear the language held in the Convention of Massts. p. 84, 86, 136.

By Mr. Dawes an advocate for the Constitution, it was observed: “our manufactures are another great subject which has recd. no encouragement by national Duties on foreign manufactures, and they never can by any authority in the Old Confedn” again “If we wish to *encourage our own manufactures* , to preserve our own commerce, to raise the value of our own lands, we must give Congs. the powers in question.

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By Mr. Widgery, an opponent, "All we hear is, that the mercht. & farmer will flourish, & that the mechanic & tradesman are to make their fortunes directly, if the Constitution goes down.

The Convention of Massts. was the only one in N. Engd. whose debates have been preserved. But it cannot be doubted that the sentiment there expressed was common to the other States in that quarter, more especially to Connecticut & Rh Isld., the most thickly peopled of all the States, and having of course their thoughts most turned to the subject of manufactures. A like inference may be confidently applied to N. Jersey, whose debates in Convention have not been preserved. In the populous and manufacturing State of Pa., a partial account only of the debates having been published, nothing certain is known of what passed in her Convention on this point. But ample evidence may be found elsewhere, that regulations of trade for the encouragement of manufactures, were considered as within the power to be granted to the new Congress, as well as within the scope of the National Policy. Of the States south of Pena., the only two in whose Conventions the debates have been preserved are Virga & N. Carola., and from these no adverse inferences can be drawn. Nor is there the slightest indication that either of the two States farthest South, whose debates in Convention if preserved have not been made public, viewed the encouragement of manufactures as not within the general power over trade to be transferred to the Govt. of the U. S.

6 If Congress have not the power it is annihilated for the nation; a policy without example in any other nation, and not within the reason of the solitary one in our own. The example alluded to is the prohibition of a tax on exports which resulted from the apparent impossibility of raising in that mode a revenue from the States proportioned to the ability to pay it; the ability of some being derived in a great measure, not from their exports, but from their fisheries, from their freights and from commerce at large, in some of its branches altogether external to the U. S.; the profits from all which being invisible & intangible would escape a tax on exports. A tax on imports, on the other hand, being a tax on consumption

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which is in proportion to the ability of the consumers whencesoever derived was free from that inequality.

7 If revenue be the sole object of a legitimate impost, and the encouragt. of domestic articles be not within the power of regulating trade it wd. follow that no monopolizing or unequal regulations of foreign Nations could be counteracted; that neither the staple articles of subsistence nor the essential implements for the public safety could under any circumstances be ensured or fostered at home by regulations of commerce, the usual & most convenient mode of providing for both; and that the American navigation, tho the source of naval defence, of a cheapening competition in carrying our valuable & bulky articles to Market, and of an independent carriage of them during foreign wars, when a foreign navigation might be withdrawn, must be at once abandoned or speedily destroyed; it being evident that a tonnage duty merely in foreign ports agst. our vessels, and an exemption from such a duty in our ports in favor of foreign vessels, must have the inevitable effect of banishing ours from the Ocean.

To assume a power to protect our navigation, & the cultivation & fabrication of all articles requisite for the Public safety as incident to the war power, would be a more latitudinary construction of the text of the Constitution, than to consider it as embraced by the specified power to regulate trade; a power which has been exercised by all Nations

for those purposes; and which effects those purposes with less of interference with the authority & conveniency of the States, than might result from internal & direct modes of encouraging the articles, any of which modes would be authorized as far as deemed "necessary & proper," by considering the Power as an incidental Power.

8 That the encouragement of Manufactures, was an object of the power, to regulate trade, is proved by the use made of the power for that object, in the first session of the first Congress under the Constitution; when among the members present were so many who had been members of the federal Convention which framed the Constitution, and of the

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State Conventions which ratified it; each of these classes consisting also of members who had opposed & who had espoused, the Constitution in its actual form. It does not appear from the printed proceedings of Congress on that occasion that the power was denied by any of them. And it may be remarked that members from Virga. in particular, as well of the antifederal as the federal party, the names then distinguishing those who had opposed and those who had approved the Constitution, did not hesitate to propose duties, & to suggest even prohibitions, in favor of several articles of her production. By one a duty was proposed on mineral Coal in favor of the Virginia Coal-Pits; by another a duty on Hemp was proposed to encourage the growth of that article; and by a third a prohibition even of foreign Beef was suggested as a measure of sound policy. (See *Lloyd's Debates.*)

A further evidence in support of the Cons, power to protect & foster manufactures by regulations of trade, an evidence that ought of itself to settle the question, is the uniform & practical sanction given to the power, by the Genl. Govt. for nearly 40 years with a concurrence or acquiescence of every State Govt. throughout the same period; and it may be added thro all the vicissitudes of Party, which marked the period. No novel construction however ingeniously devised, or however respectable and patriotic its Patrons, can withstand the weight of such authorities, or the unbroken current of so prolonged & universal a practice. And well it is that this cannot be done without the intervention of the same authority which made the Constitution. If it could be so done, there would be an end to that stability in Govt. and in Laws which is essential to good Govt. & good Laws; a stability,

the want of which is the imputation which has at all times been levelled agst.

Republicanism with most effect by its most dexterous adversaries. The imputation ought never therefore to be countenanced, by innovating constructions, without any plea of a precipitancy or a paucity of the constructive precedents they oppose; without any appeal to material facts newly brought to light; and without any claim to a better knowledge of the

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original evils & inconveniences, for which remedies were needed, the very best keys to the true object & meaning of all laws & constitutions.

And may it not be fairly left to the unbiased judgment of all men of experience & of intelligence, to decide which is most to be relied on for a sound and safe test of the meaning of a Constitution, a uniform interpretation by all the successive authorities under it, commencing with its birth, and continued for a long period, thro' the varied state of political contests, or the opinion of every new Legislature heated as it may be by the strife of parties, or warped as often happens by the eager pursuit of some favourite object; or carried away possibly by the powerful eloquence, or captivating address of a few popular Statesmen, themselves influenced, perhaps, by the same misleading causes. If the latter test is to prevail, every new Legislative opinion might make a new Constitution; as the foot of every new Chancellor would make a new standard of measure.

It is seen with no little surprize, that an attempt has been made, in a highly respectable quarter, and at length reduced to a resolution formally proposed in Congress, to substitute for the power of Congs. to regulate trade so as to encourage manufactures, a power in the several States to do so, with the consent of that Body; and this expedient is derived from a clause in the 10 sect. of Art: I. of the Const; which says: ["No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any State on imports and exports shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress."]

To say nothing of the clear indications in the Journal of the Convention of 1787, that the clause was intended merely to provide for expences incurred by particular States in their inspection laws, and in such improvements as they might chuse to make in their Harbours & rivers with the sanction of Congr., objects to which the reserved power has been applied in several instances, at the request of Virginia & of Georgia, how could it ever be imagined

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that any State would wish to tax its own trade for the encouragement of manufactures, if possessed of the authority, or could in fact do so, if wishing it?

A tax on imports would be a tax on its own consumption; and the nett proceeds going, according to the clause, not into its own treasury, but into the treasury of the U. S., the State would tax itself separately for the equal gain of all the other States; and as far as the manufactures so encouraged might succeed in ultimately increasing the Stock in Market, and lowering the price by competition, this advantage also, procured at the sole expence of the State, would be common to all the others.

But the very suggestion of such an expedient to any State would have an air of mockery, when its *experienced* impracticability is taken into view. No one who recollects or recurs to the period when the power over Commerce was in the individual States, & separate attempts were made to tax or otherwise regulate it, needs be told that the attempts were not only abortive, but by demonstrating the necessity of general & uniform regulations gave the original impulse to the Constitutional reform which provided for such regulations.

To refer a State therefore to the exercise of a power as reserved to her by the Constitution, the impossibility of exercising which was an inducement to adopt the Constitution, is, of all remedial devices the last that ought to be brought forward. And what renders it the more extraordinary is that, as the tax on commerce as far as it could be separately collected, instead of belonging to the treasury of the State as previous to the Constn. would be a tribute to the U. S.; the State would be in a worse condition, after the adoption of the Constitution, than before, in relation to an important interest, the improvement of which was a particular object in adopting the Constitution.

Were Congress to make the proposed declaration of consent to State tariffs in favour of State manufactures, and the permitted attempts did not defeat themselves, what would be the situation of States deriving their foreign supplies through the ports of other States? It is evident that they might be compelled to pay, in their consumption of particular articles

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imported, a tax for the common treasury not common to all the States, without having any manufacture or product of their own to partake of the contemplated benefit.

Of the impracticability of separate regulations of trade, & the resulting necessity of general regulations, no State was more sensible than Virga. She was accordingly among the most earnest for granting to Congress a power adequate to the object. On more occasions than one in the proceedings of her Legislative Councils, it was recited, "that the relative situation of the States had been found on *trial* to require *uniformity* in their commercial regulations as the *only* effectual policy for obtaining in the ports of foreign nations a stipulation of privileges reciprocal to those enjoyed by the subjects of such nations in the ports of the U.S., for preventing animosities which cannot fail to arise among the several States from the interference of partial & separate regulations; and for *deriving from commerce* such aids to the public *revenue* as it ought to contribute," &c.

During the delays & discouragts. experienced in the attempts to invest Congs. with the necessary powers, the State of Virga. made various trials of what could be done by her individual laws. She ventured on duties & imposts as a source of Revenue; Resolutions were passed at one time to encourage & protect her own navigation & ship-building; and in consequence of complaints & petitions from Norfolk, Alexa. & other places, agst. the monopolizing navigation laws of G. B., particularly in the trade *between the U. S. & the British W. Indies*, she deliberated with a purpose controuled only by the inefficacy of separate measures, on the experiment of forcing a reciprocity by prohibitory regulations of her own. (See Journal of Hs. of Delegates in 1785.)

The effect of her separate attempts to raise revenue by duties on imports, soon appeared in Representations from her Merchts., that the commerce of the State was banished by them into other channels, especially of Maryd., where imports were less burdened than in Virginia. (See do. 1786.)

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Such a tendency of separate regulations was indeed too manifest to escape anticipation. Among the projects prompted by the want of a federal authy. over Commerce, was that of a concert, first proposed on the part of Maryd. for a uniformity of regulations between the 2 States, and comissioners were appointed for that purpose. It was soon perceived however that the concurrence of Pena. was as necessary. to Maryd. as of Maryd. to Virga., and the concurrence of Pennsylvania was accordingly invited. But Pa. could no more concur witht. N. Y. than Md. witht. Pa. nor N. Y. witht. the concurrence of Boston &c.

These projects were superseded for the moment by that of the Convention at Annapolis in 1786, and forever by the Convn at Pha in 1787, and the Consn. which was the fruit of it.

There is a passage in Mr. Necker's work on the finances of France which affords a signal illustration of the difficulty of collecting, in contiguous communities, indirect taxes when not the same in all, by the violent means resorted to against smuggling from one to another of them. Previous to the late revolutionary war in that Country, the taxes were of very different rates in the different Provinces; particularly the tax on salt which was high in the interior Provinces & low in the maritime; and the tax on Tobacco, which was very high in general whilst in some of the Provinces the use of the article was altogether free. The consequence was that the standing army of Patrols agst smuggling, had swollen to the number of twenty three thousand; the annual arrests of men women & children engaged in smuggling, to five thousand five hundred & fifty; and the number annually arrested on account of Salt & Tobacco alone, to seventeen or eighteen hundred, more than three hundred of whom were consigned to the terrible punishment of the Galleys.

May it not be regarded as among the Providential blessings to these States, that their geographical relations multiplied as they will be by artificial channels of intercourse, give such additional force to the many obligations to cherish that Union which alone secures their peace, their safety, and their prosperity. Apart from the more obvious & awful consequences of their entire separation into Independent Sovereignties, it is worthy of special consideration, that divided from each other as they must be by narrow waters

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& territorial lines merely, the facility of surreptitious introductions of contraband articles, would defeat every attempt at revenue in the easy and indirect modes of impost and excise; so that whilst their expenditures would be necessarily & vastly increased by their new situation, they would, in providing for them, be limited to direct taxes on land or other property, to arbitrary assessments on invisible funds, & to the odious tax on persons.

You will observe that I have confined myself, in what has been said to the constitutionality & expediency of the power in congress to encourage domestic products by regulations of commerce. In the exercise of the power, they are responsible to their Constituents, whose right & duty it is, in that as in all other cases, to bring their measures to the test of justice & of the general good.